CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	☐ Force	☐ Discourt.	U.S.
Benjamin Shelton		Squad #11	202101174	✓ Abuse	O.L.	☐ Injury
Incident Date(s)		Location of Incident:	•	Precinct:	18 Mo. SOL	EO SOL
Thursday, 02/11/2021 3:00 AM		§ 87(2)(b) § 8	7(2)(b)	78	8/11/2022	8/11/2022
Date/Time CV Reported		CV Reported At:	How CV Reported:	Date/Tim	ne Received at CCF	RB
Thu, 02/11/2021 6:36 AM		IAB	Phone	Mon, 02/	22/2021 11:38 AN	Л
Complainant/Victim	Туре	Home Addre	ess			
Subject Officer(s)	Shield	TaxID	Command			
1. SGT Andrew Lindsay	4737	947177	078 PCT			
2. PO Adnan Mughal	25962	967216	078 PCT			
3. PO Gene Li	26977	965267	078 PCT			
4. PO Avery Villagonzalez	25805	969418	078 PCT			
Officer(s)	Allegati	ion		Inv	vestigator Recon	nmendation
A.SGT Andrew Lindsay	Abuse: \$ 87(2)(b)	Sergeant Andrew Lindsa	y entered in Brooklyn			
B.PO Adnan Mughal	Abuse: 1 § 87(2)(b)	Police Officer Adnan Mu	•			
C.PO Gene Li	Abuse:] § 87(2)(b)	Police Officer Gene Li en	•			
D.PO Avery Villagonzalez	Abuse: Police Officer Avery Villagonzalez entered in Brooklyn. 887(2)(b) in Brooklyn.					
E.PO Adnan Mughal	Abuse: Police Officer Adnan Mughal searched in Brooklyn.					
F.PO Avery Villagonzalez	Abuse: Police Officer Avery Villagonzalez searched 8 87(2)(b) in Brooklyn.					
G.PO Gene Li	Abuse: 1 § 87(2)(b)	Police Officer Gene Li se	earched in Brooklyn			
H.SGT Andrew Lindsay	Abuse: \$ 87(2)(b)	Sergeant Andrew Lindsa	y searched in Brooklyn			
I.SGT Andrew Lindsay	Abuse:	Sergeant Andrew Lindsa with a business card.	y failed to provide §8	7(2)(b)		
J.PO Adnan Mughal	Abuse: 1 § 87(2)(b)	Police Officer Adnan Mu with a business		e		
K.PO Gene Li	Abuse:	Police Officer Gene Li fa with a business card.	ailed to provide § 87(2)(t	b)		
L.PO Avery Villagonzalez	Abuse:] \$ 87(2)(b)	Police Officer Avery Vil with a business		orovide		

Case Summary

On February 11, 2021, \$87(2)(6) filed this complaint with IAB over the phone, generating original log #21-03095. On February 22, 2021, the CCRB received this complaint.

On February 11, 2021, at approximately 3:00 a.m., Sgt. Andrew Lindsay, PO Adnan Mughal, PO Gene Li, and PO Avery Villa-Gonzalez of the 78th Precinct arrived at \$87(2)(b) about her son and a recent crime that took place in the area. \$87(2)(b) moved away from the door to her bedroom and all four officers entered her apartment (Allegations A to D: Abuse of Authority, \$87(2)(c) while inside the apartment, all four officers opened doors to search for \$87(2)(b) son (Allegations E to H: Abuse of Authority, \$87(2)(c) a business card before exiting her apartment (Allegations I to L: Abuse of Authority, \$87(2)(c)

No arrests were made, and no summonses were issued during this incident.

Video footage was provided by the NYPD Legal Bureau from the body-worn cameras (BWC) assigned to Sgt. Lindsay, PO Mughal, PO Li, and PO Villa-Gonzalez (BR 01-04).

Findings and Recommendations

I manigo ana recommendations						
Allegation A – Abuse of Authority: Sergeant Andrew Lindsay entered 857(2)(6)						
in Brooklyn.						
Allegation B – Abuse of Authority: Police Officer Adnan Mughal entered \$87(2)(b)						
§ 87(2)(b) in Brooklyn.						
Allegation C – Abuse of Authority: Police Officer Gene Li entered \$87(2)(b)						
in Brooklyn.						
Allegation D – Abuse of Authority: Police Officer Avery Villa-Gonzalez entered 887(2)(b)						
§ 87(2)(b) in Brooklyn.						
Sgt. Lindsay's BWC footage addresses these allegations (BR 01). The durational timestamp						
will be referenced. At 2:30, officers approach \$87(2)(b) s apartment door. At 2:50, PO Mughal						
and PO Li appear to place their ears next to \$87(2)(b) appartment door as PO Villa-Gonzalez						
makes a phone call. It is apparent that no one answers. Between 3:14 and 3:50, PO Mughal and PO						
Li knock on the door. At 4:00, \$87(2)(b) asks from behind the closed door who it is and officers						
tell her they are NYPD. At 4:21, \$87(2)(b) opens the door and officers ask if \$87(2)(b) is there						
states yes, and officers ask \$87(2)(b) to have him come outside. She states no, and						
that she is the only one in the residence. She asks, \$87(2)(b) who?" and an officer tells her						
states she does not know where he is. At 4:45, \$87(2)(b) appears to lose her breath						
and turns away from the officers and into the residence. PO Li asks her if she is okay. She tells						
officers she has to get her oxygen machine. She walks away from the door and asks what happened						
An officer tells her there's been an incident at the hotel. The door remains open. At 5:00, PO						
Mughal leans into the doorway and shines a flashlight into the interior gap between the door and its						
frame. At 5:15, as PO Li appears to look into the apartment at an angle, \$87(2)(6) states, "Wait,						
wait, wait." Sgt. Lindsay walks to the entrance of the apartment and appears to lean in past the						
threshold as \$87(2)(6) continues walking to the end of a hallway and enters her bedroom. At						
5:45, \$87(2)(b) calls for officers. An officer states, "Yes," and \$87(2)(b) tells them to come						
in. At 5:53, Sgt. Lindsay enters.						
PO Villa-Gonzalez's BWC footage also addresses these allegations (BR 04). The						
durational timestamp will be referenced. At 5:20, \$87(2)(b) tells officers to come inside. Sgt.						
Lindsay, PO Mughal, PO Li, and PO Villa-Gonzalez all enter, in that order.						
testified that she was the only person inside her residence at the time of the						
incident (BR 05). Her two sons generally live at the residence with her, including \$87(2)(6)						
Her apartment has three bedrooms, three closets in the main corridor, a bathroom, and open areas						

for the kitchen and the living room. All doors to the rooms and closets were closed except for bedroom door and the sliding door of the closet next to the front door which she always keeps partially open. The only source of sound inside her apartment at the time was the humming of an oxygen tank she keeps near her bed due to her condition of sarcoidosis, which affects her breathing by creating a lack of direct oxygen. She only recalled an officer asking her if (\$87(2)(6) was home, which she denied, and officers told her he was involved in an incident at a believed she looked in distress and described her breathing as labored due to her sarcoidosis and stress with answering the door to the presence of police. She told officers she needed to get some oxygen, left them at the door and walked to her bedroom. She let go of the door to let it close as it typically closes on its own but assumed that Sgt. Lindsay held it open and walked in because she never heard it shut. She believed Sgt. Lindsay did so because she eventually observed him inside her bedroom. \$87(2)(b) had no issue with Sgt. Lindsay accompanying her as she assumed, he did so to make sure she was okay due to her apparent poor health. She was not aware of other officers coming in at that point. She was not sure when or how other officers walked in. Once in her bedroom, she heard Sgt. Lindsay enter and saw him standing inside her bedroom. She sat down on the bed to hook herself up to the oxygen tank. She could not see into the hallway or other areas of the house. § 87(2)(b) stated that no officer sought her consent to enter, and she did not tell any officers to come inside.

Sgt. Lindsay testified that, just before arriving at \$87(2)(b) residence, he responded to a hotel at 611 Union Street in Brooklyn for an assault (BR 06). He arrived as patrol supervisor with his operator, PO Mughal, to assist the assigned unit, PO Li and PO Villa-Gonzalez. A female victim with visible injuries to her face in the hotel lobby explained to officers that she got into a dispute with a man in a rented room, and he punched her in the face before taking her phone and fleeing the hotel. Officers went to the front desk and retrieved information, including a copy of the perpetrator's photo identification and a phone number. His name and address on the ID were 887(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b) in Brooklyn, respectively. This was approximately seven blocks from the hotel, so Sgt. Lindsay led the other three officers to \$87(2)(6) residence. Officers called \$87(2)(b) phone twice and did not hear any ringing from within the apartment and no one answered the phone. Outside the apartment, Sgt. Lindsay only heard a television. Sgt. Lindsay intended to investigate whether \$87(2)(b) was there and if he had the woman's cellphone, which would have provided officers with probable cause to arrest him. § 87(2)(b) answered the door, and when officers asked if \$87(2)(b) was there, \$87(2)(b) told them he was not. She asked officers to wait a minute before walking away. She never confirmed or denied if she was the only one inside. Sgt. Lindsay asked her if she needed medical attention due to her breathing and she stated no and kept walking to her bedroom at the end of the hallway. Officers did not hear any additional noises or indications anyone was behind the woman or in the apartment, but the television remained on. From their position in the hallway, officers could not see anything further than the wall immediately facing the door. §87(2)(b) never closed the door and it staved open as officers waited for her to return. Sgt. Lindsay did not glean any indications that anyone else was inside the apartment with § 87(2)(b) called from her bedroom, "Officers, come in," which he interpreted as an invitation for all officers to enter. Sgt. Lindsay believed she invited officers in as due to her medical condition she was unable to return to the door, so she wanted to speak to officers from her bedroom.

PO Mughal provided consistent testimony to Sgt. Lindsay regarding the initial events at the hotel and his intentions in going to apartment were to look for and investigate adding that the female victim provided information as recorded on his ID (BR 07). When he initially heard the television from outside the apartment, he only heard voices and it was unclear to him if this was a television or actual people inside. PO Mughal could not tell how many voices there were or if it was male or female. This indicated to PO Mughal that at least someone was home. He heard nothing else behind the door, and only confirmed the source of the noise was a television after entering the apartment. After \$87000 answered the door, he

observed no indications anyone else was home. PO Mughal still heard the initial noise. PO Mughal stated he entered the apartment after \$87(2)(b) walked away because she had invited officers inside and his sergeant entered before him. PO Li provided consistent testimony to Sgt. Lindsay (BR 08). PO Li recognized the sound from behind the closed door to be a television, and stated he also heard a muffled male voice and female voice that he was not sure belonged to an actual person or came from the television. After knocking, the female voice ceased, and he moved away from the door so was unable to hear if the television or potentially separate male voice continued. When \$87(2)(b) answered the door, officers told her they were there to look for \$87(2)(b) providing his first name. \$87(2)(b) initially stated yes, and when officers asked to confirm, she stated no. He believed that other people besides \$37(2)(b) were home but made no specific observations there were. When \$37(2)(b) called from her bedroom, "Officers, come in," PO Li interpreted it as an invitation for all officers to enter. During officers' conversation with \$87(2)(6) at the front door, PO Villa-Gonzalez did not observe any indications anyone else was inside the apartment. When \$87(2)(6) called to officers to come in, all four officers entered. Event information for ICAD #D21021101675 records a male caller reporting a woman screaming in a hotel room at 2:30 a.m. (BR 10). At 2:58 a.m., Sgt. Lindsay's reported that he was canvassing \$87(2)(b) address with PO Li and PO Villa-Gonzalez. Aided report #2021-078-000136, reported by PO Li, details that the female victim, was punched in the face with closed fists multiple times on the incident date at approximately 1:55 a.m. and sustained bruising, swelling, and pain to her face (BR 11). Criminal complaint report \$87(2)(b) included the same information, naming the assailant as \$87(2)(b) \$87(2)(b) adding that \$87(2)(b) also took \$87(2)(b) phone at some point during the incident (BR 12). The courts have found officers can legally enter a residence if they are provided consent to enter, and that consent can be provided by conduct, such as stepping aside from an open door to admit officers, as well as words People v. Brown, 234 A.D.2d 211 (1996) (BR 13). Consent is voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice, and becomes invalid if the product of official coercion, actual or implicit, overt, or subtle People v. Gonzalez, 39 N.Y.2d 122 (1976) (BR 14). § 87(2)(b), § 87(2)(g) Allegations E – Abuse of Authority: Police Officer Adnan Mughal searched [887(2)(6)] in Brooklyn. Allegations F – Abuse of Authority: Police Officer Avery Villa-Gonzalez searched § 87(2)(b) in Brooklyn. Allegations G – Abuse of Authority: Police Officer Gene Li searched 887(2)(b) in Brooklyn. Allegations H – Abuse of Authority: Sergeant Andrew Lindsay searched 887(2)(b) in Brooklyn. PO Mughals' BWC partially addresses these allegations (BR 02). The durational timestamp

will be referenced. At 6:00, PO Mughal enters right of the front door and shines a flashlight into an open room where a television appears to be on. PO Mughal moves down the hallway to where Sgt. Lindsay is, by \$87(2)(b) bedroom. At 6:10, Sgt. Lindsay appears to glance into an open room on his left, the bathroom. At 6:17, Sgt. Lindsay asks who \$87(2)(b) is to \$87(2)(b) and PO Mughal appears to do the same. Sgt. Lindsay begins speaking to \$87(2)(b) in her bedroom about her son. At 6:24, PO Mughal shines a flashlight into the bathroom, enters and moves a shower curtain aside to inspect the tub. At 6:30, he moves out of the bathroom and PO Li stands just behind Sgt. Lindsay within \$87(2)(b) bedroom. A door at the end of the hallway, between \$87(2)(b) bedroom and the bathroom, is clearly shut. At 6:40, PO Mughal opens the door, shines a flashlight inside, and leans in before closing the door at 6:53. At 7:15, PO Mughal moves down the hallway back toward the front door to where PO Villa-Gonzalez stands. A door in the middle of the hallway on the left is clearly shut. At 7:19, PO Mughal opens this door, shines his flashlight in, and looks inside the room with PO Villa-Gonzalez before closing the door at 7:39. At 7:40, officers begin to leave. At 7:48, PO Mughal shines his flashlight into an open kitchen. At 7:53, as PO Mughal and PO Villa-Gonzalez is about to exit the apartment just in front of PO Mughal, \$87(2)(b) officers why they are checking her house if she told them her son was not there and they do not need to search her residence. Sgt. Lindsay acknowledges her protests, and all officers exit.

PO Li's BWC also addresses these allegations (BR 03). The durational timestamp will be referenced. From 6:50 to 7:11, PO Mughal opens the bedroom door in the middle of the hallway for him and PO Villa-Gonzalez to inspect and then closes it. At 7:19, PO Li opens a closet in the hallway that was previously shut and looks inside. He looks in a room to the left that Sgt. Lindsay stands next to with his hands on the door. The door was previously shut. At 7:26, \$87(2)(6) begins to protest.

PO Villa-Gonzalez's BWC also addresses these allegations (BR 03). The durational timestamp will be referenced. Between 5:39 and 6:20, PO Villa-Gonzalez enters and looks into the living room, the kitchen, and the bathroom, all open. At 6:48, PO Mughal opens the bedroom door in the middle of the hallway which was previously shut and both officers look inside.

was only aware of Sgt. Lindsay entering her apartment. Caught her breath in her bedroom as Sgt. Lindsay remained inside the room with her for a few minutes. They did not converse. She got up to escort Sgt. Lindsay outside. In the hallway, she observed PO Mughal or PO Li, who were standing together with PO Villa-Gonzalez, holding the knob, and closing the open door to one of the bedrooms, which was previously closed. Sazento told officers to leave, and they left. She did not know what officers did inside that other bedroom and did not know any other areas they went inside the apartment and noticed nothing was disturbed or moved.

Upon entering the apartment, Sgt. Lindsay entered \$87(2)(b) bedroom at the end of the hallway. He passed by another bedroom on his right in the hallway with the door cracked open and a bathroom on his left with the door completely open. The other three officers were behind him in the hallway as he stood in \$87(2)(b) bedroom entryway. Officers did not perform any security sweeps. Sgt. Lindsay stated there were no specific safety concerns, but there was a general concern in entering any apartment with closed doors with an unknown number of residents and an unknown layout. Sgt. Lindsay and § 87(2)(b) briefly discussed her son and the incident at the hotel. After did not need medical attention, he turned to leave. Sgt. Lindsay was not confirming § 87(2)(b) aware of what of his officers did within the apartment during that time. On the way out of the apartment, Sgt. Lindsay observed PO Li look into the bathroom. The light was on and Sgt. Lindsay also looked inside and saw no indications a person was inside. The bedroom door was cracked wide enough to place your arm into. An officer Sgt. Lindsay did not recall pushed the door further open to allow them to place their heads inside for a visual inspection. Other than this, he was not aware of any other instances where an officer touched or moved a door. Officers only looked into rooms that were already open to see if \$87(2)(b) was there for investigatory purposes as well as officer safety to make sure no dangerous individuals were hiding there. Sgt. Lindsay never saw or heard

any indications anyone else was inside the apartment beside St. Lindsay never felt at risk of physical injury or any specific safety concerns while inside the residence. Officers immediately exited when st. began to yell at them. When presented the above-reference footage from his own BWC, he observed PO Li possibly look inside a closet before looking in the other bedroom but stopped mid-sentence when his Legal Counsel told him not to speculate. He was unable to say why PO Li opened the door. When presented the above-referenced footage from PO Li's BWC, Sgt. Lindsay observed PO Mughal and PO Villa-Gonzalez inspect a room before closing the door and then saw his own left hand on the left side of the doorframe of that room. Sgt. Lindsay could not explain how the door to that room opened and guessed that he opened it but reiterated that it was not fully closed. Sgt. Lindsay did not recall opening the door or if he had to push it open or turn the knob, but stated it was clearly more open than depicted before when PO Mughal and PO Villa-Gonzalez finished their visual inspection. He did not know if it was fully closed. Sgt. Lindsay stated he opened the door to look for strong linds and stated it was fully closed. Sgt. Lindsay stated he opened the door to look for strong linds and linds are linds and linds and linds and linds are linds and linds and linds and linds are linds and linds are linds and linds are linds and linds and linds are linds and linds and linds are linds are linds and linds are linds are linds and l

PO Mughal had concerns for his safety and that of the other officers due to the potential within the apartment. PO Mughal began a security sweep as soon as he entered, shining his flashlight around. He did not recall specific areas he swept, but stated he only checked areas and things in plain view. He went down the hall toward \$87(2)(6) the end, which was at the end of the hall. A second bedroom in the hallway was completely shut. PO Mughal conducted a security sweep of that room by opening it and shining his flashlight in it. The reason for opening that door was because it was the only room that was closed. He heard no noises from behind the door and observed no indications anyone was inside the room before opening it. PO Mughal initially stated the only reason for opening the door was for security purposes, then when asked if it was also to investigate the earlier crime and look for second to arrest him, he stated yes. PO Mughal entered the bathroom and moved the shower curtain for security purposes and to look for \$37(2)(6) to arrest him. He did not know what other officers were doing as he did his security sweep. He did not observe any indications anyone besides was within the apartment. When presented the above-referenced footage from his own BWC, PO Mughal observed himself open an additional door that he did not initially recall and did so for security purposes and to look for § 87(2)(b) to arrest him.

Before entering the apartment, PO Villa-Gonzalez stated there were general safety concerns pertaining entering an unknown residence, such as the layout or who might be inside. There were specific concerns due to potential presence of a violent perpetrator. Upon entering, officers conducted a brief interior sweep for their safety. PO Villa-Gonzalez could only speak to his own actions during sweep, which involved looking into open areas that were already visible to make sure nothing to cause harm or anyone else. He looked into the open living room and proceeded down the hallway toward bedroom. He recalled a closet to his left in the hallway and another bedroom on the right. He was not sure if this other bedroom's door was open or closed. He described his observations of the other room as it being empty. He believed that, based on an earlier review of his BWC, he looked into the room but did not recall how he gained sight of the interior.

Upon entering, he conducted a security sweep and looked for stocking into the open areas of the living room, kitchen, and bathroom, and gleaned no specific risk factors to officer safety. On the way out of the apartment, PO Li opened a closed door to check for any potentially dangerous individuals, including stocking. He discovered it was a pantry and closed it. He was not aware of any other doors that officers opened. When presented the above-referenced footage from his own BWC, he saw PO Mughal and PO Villa-Gonzalez look into the bedroom in the middle of the hallway and that PO Mughal closed the door. He observed himself look inside the room after opening and checking the pantry. He stated he did not open the door and did not how it opened or if Sgt. Lindsay opened it.

According to <u>People v. Green</u>, 103 A.D.2d 362 (1984), a protective sweep, also known as a security check, is "a very quick and limited pass through the premises to check for third persons

who may destroy evidence or pose a threat to the officers" (BR 15). The scope of the sweep may be no broader than to protect the police officer from the perceived danger <u>People v. Cornielle</u>, 173 A.D.2d 681 (1991) (BR 16). <u>People v. Smith</u>, 179 A.D.2d 597 (1992) states that as a general rule, because the police are searching for individuals who may be in the premises, a search pursuant to a security sweep can be conducted only in areas that are large enough to hide a person (BR 17).

§ 87(2)(b), § 87(2)(g)
Allegations I – Abuse of Authority: Sergeant Andrew Lindsay failed to provide 887(2)(b)
with a business card.
Allegations J – Abuse of Authority: Police Officer Adnan Mughal failed to provide \$87(2)(b)
with a business card.
Allegations K – Abuse of Authority: Police Officer Gene Li failed to provide 887(2)(b)
with a business card.
Allegations L – Abuse of Authority: Police Officer Avery Villa-Gonzalez failed to provide
with a business card.
Sgt. Lindsay's BWC footage addresses these allegations (BR 01). The durational timestamp
will be referenced. At 7:10, as Sgt. Lindsay speaks to \$87(2)(b) in her room, he apologizes for
the disturbance and tells her to have a good night. At 7:25, \$87(2)(b) tells Sgt. Lindsay she has
to get up. Sgt. Lindsay tells her officers will ensure her door is closed and tells her good night
again. He and all other officers then begin to leave. No officer, in any of the available footage,
offers a business card to \$87(2)(b)
confirmed that no officer offered to provide her with their business card.
Sgt. Lindsay, PO Li, PO Mughal, and PO Villa-Gonzalez stated that [887(2)(b)] never
asked them for business cards, so they did not provide any. PO Mughal and PO Li both stated the
incident did not constitute a law enforcement action, such as a stop or vehicle checkpoint, that
would have obligated the provision of officers' business cards.
During certain law enforcement activities including searches of property and home
searches, officers are to offer business cards to civilians at the conclusion of that activity New York
City Administrative Code 14-173 (BR 18).
§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which \$87(2)(b) has been a party (BR 19).
- Sgt. Lindsay has been a member-of-service for 13 years and has been a subject in 10 other cases and 26 other allegations, one of which has been substantiated (see officer history):
 - 201402707 involved a substantiated allegation of force by using a blunt instrument as a club. The Board recommended Command Discipline B and the NYPD imposed Command Discipline B.

○ § 87(2)(g)

- PO Mughal has been a member-of-service for two years and has been a subject in one other case and one other allegation which was not substantiated (see officer history).
- Po Li has been a member-of-service for three years and this is the first CCRB complaint to which he has been a subject (see officer history).
- PO Villa-Gonzalez has been a member of service for one year and this is the first CCRB complaint to which he has been a subject (see officer history).

Mediation, Civil, and Criminal Histories

- \$87(2)(b) declined to mediate this complaint.
- On October 13, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (BR 20).

Squad:1	1		
Investigator: _	Benjamin Shelton Signature	SI Benjamin Shelton Print Title & Name	11/29/21 Date
Squad Leader: _	Edwin Pena Signature	IM Edwin Pena Print Title & Name	11/29/21 Date
Reviewer: _	Signature	Print Title & Name	Date